IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

MFA.No. 957 of 2002()

OPMV.1257/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM

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APPELLANT: APPLICANT

MANIYAN S/O. NARAYNN, KUNNUMPURATHU VEEDU, VENCHAVODE, SREEKARIYAM P.O., THIRUVANANTHAPURAM

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: RESPONDENTS

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1. THE MANGING DIRECTOR, K.S.R.T.C., THIRUVANANTHAPURAM

2. K. BHUVANENDRAN S/O. KRISHNA PANICKER, ANITHOTTATHU VEEDU, KADAVATTARAM, NEYYATTINKARA.

3. THE NATIONAL INSURANCE COMPANY LTD., DIVISIONAL OFFICE VAZHUTHACAUD, THIRUVANANTHAPURAM, REPRESENTED BY ITS DIVISIONAL MANAGER, THIRUVANANTHAPURAM

4. JAYADEVAN S/O. VELAYUDHAN, SREELEKSHMI VILASOM, KARAMANA P.O., THIRUVANANTHAPURAM

5. THE ORIENTAL INSURANCE COMPANY LTD., DIVISIONAL OFFICE, THAKARAPARAMBU, THIRUVANANTHAPURAM, REPRESENTED BY ITS DIVISIONAL MANAGER, THIRUVANANTHAPURAM

BY ADV. SRI.SAJEEVKUMAR K.GOPAL,SC,KSRTC- FOR R1

SRI.LAL GEORGE FOR R3

SRI.GEORGE CHERIAN (THIRUVALLA) FOT R5

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.

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M.F.A.No.957 of 2002

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Dated this the 30th day of March, 2007.

ORDER

Antony Dominic,J.

Claimant in O.P.(MV) No.1257 of 1999 of the Motor Accidents Claims Tribunal, Thiruvananthapuram is the appellant. On 22.4.1999, when the appellant was travelling in a car bearing registration No.KRV 9862 from Thiruvananthapuram to Kottarakkara, it collided with a K.S.R.T.C. bus driven by the second respondent, as a result of which, the appellant sustained injuries. Accordingly, the claimant had filed application before the Tribunal claiming a total compensation of Rs.2,00,000/-, limiting the same to Rs.1,50,000/-. The injuries sustained by the claimants are mentioned in paragraph 12 of the award and the claimant described himself as a businessman of 58 years earning a monthly income of Rs.3,500/-. By the impugned award, the Tribunal granted a total compensation of Rs.23,750/-.

2. During the course of hearing, counsel for the appellant confined his submission to the claim towards permanent disability suffered by the appellant. Ext.A7 is the certificate issued by

Dr.Bavadasan, Professor of Neurosurgery, Department of Neuro Surgery, which certified that the appellant had permanent neurological disability of 10%. Despite the certificate available on record, the Tribunal did not grant any compensation towards permanent disability on the basis that no permanent disability certificate is produced in the case. This is seen mentioned in paragraph 13 of the award. Thus, the Tribunal has proceeded on an erroneous assumption that there was lack of evidence in support of the claim of the appellant regarding permanent disability suffered by him. In the light of Ext.A7 on record, we have to hold that the Tribunal has committed an illegality in this respect and that the appellant is entitled to be compensated towards permanent disability suffered by him and certified in Ext.A7.

3. Now what remains to be considered is the amount that is to be awarded towards permanent disability. The appellant has claimed Rs.75,000/- under this head. He was also claiming a monthly income of Rs.3,500/- and his age was 58. Among the injuries suffered by the appellant, injury No.1 is a fracture to nasal bone with displacement and these are also seen certified in Ext.A6 wound certificate. We also notice that towards pain and suffering, against the claim of Rs.50,000/-, the appellant has already been granted 15,000/- by the Tribunal. Despite the fact that even the appellant has not mounted the

box and tendered any evidence, taking into account the injuries suffered by him, the age and income of the appellant, we feel that the appellant will be adequately compensated by awarding a lumpsum compensation of Rs.25,000/- towards permanent disability.

4. In the circumstances, the award in O.P.(M.V.)No.1257 of 199 will stand modified and the claimant will be entitled to an additional compensation of Rs.25,000/- towards permanent disability suffered by him and this additional amount will carry interest at the rate of 7% per annum from the date of petition till the date of realisation.

Appeal will stand disposed of as above.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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